

Remarks

Applicant has received the Examiner's Advisory Action dated August 26, 2004. In accordance with the Examiner's request by voicemail message to Derek Jardieu on September 10, 2004, Applicant submits this response explaining that the Advisory Action is improper. For the reasons described below, Applicant respectfully requests that the Advisory Action be withdrawn.

On December 17, 2004, Applicant filed a Response to an Office Action mailed September 17, 2003. That Office Action was the first in the present Application and was, therefore, non-final. Off. Act. Sum. at p. 1. In response, the Examiner mailed a second Office Action on March 18, 2004. Therein, the Examiner stated: "Applicant's arguments ... have been fully considered and are persuasive. Therefore, the rejection has been withdrawn." Off. Act. at p. 2. Thus, that Office Action was also non-final. *See also*, Off. Act. Sum. at p. 1.

Applicant filed a response to this second non-final Office Action on July 19, 2004. In response, the Examiner mailed the above-referenced Advisory Action on August 26, 2004. Applicant respectfully asserts that an Advisory Action is a proper response only to an insufficient after-final response. *See* Advisory Action at p. 1 ("A proper reply to a final rejection under 37 CFR 1.113 may only be either ..." (emphasis in original)). Because Applicant has never received a final rejection in the present application, Applicant's July 19, 2004 response could not have been an after-final response. For at least this reason, Applicant respectfully requests that the Examiner withdraw the Advisory Action.

Conclusion

Applicants believe that a proper response has been made to the outstanding Advisory Action. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Withdrawal of the improper Advisory Action is respectfully requested.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Derek J. Jardieu". The signature is fluid and cursive, with the first name "Derek" and last name "Jardieu" clearly distinguishable.

Derek J. Jardieu (Reg. No. 44,483)

Date: September 27, 2004

HOWREY SIMON ARNOLD & WHITE, LLP
Box No. 34
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2402
(202) 783-0800